

ESTTA Tracking number: **ESTTA233069**Filing date: **08/27/2008**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**Petition for Cancellation**

Notice is hereby given that the following party requests to cancel indicated registration.

Petitioner Information

Name	PFIP, LLC		
Entity	Limited Liability Company	Citizenship	New Hampshire
Address	113 Crosby Road Unit 15 Dover, NH 03820 UNITED STATES		

Attorney information	TERESA C. TUCKER GROSSMAN, TUCKER, PERREAULT & PFLEGER, PLLC 55 SOUTH COMMERCIAL STREET MANCHESTER, NH 03101 UNITED STATES ttucker@gtpp.com Phone:6036686560
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Registration Subject to Cancellation

Registration No	3403041	Registration date	03/25/2008
Registrant	Karen L. Angell and Paul D. Angell Joint Venture, The 134 6th Avenue Kirkland, WA 98033 UNITED STATES		

Goods/Services Subject to Cancellation

Class 041. First Use: 2005/07/01 First Use In Commerce: 2005/08/01 All goods and services in the class are cancelled, namely: Physical fitness consultation and instruction based on Pilates, dance, personal training and performance exercise programs, conducted in studios, seminars and personal sessions; video production of physical fitness consultation and instruction programs based on Pilates, dance, personal training and performance programs

Grounds for Cancellation

<i>Torres v. Cantine Torresella S.r.l.Fraud</i>	808 F.2d 46, 1 USPQ2d 1483 (Fed. Cir. 1986)
Priority and likelihood of confusion	Trademark Act section 2(d)

Marks Cited by Petitioner as Basis for Cancellation

U.S. Application No.	77457337	Application Date	04/24/2008
Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	PF		

Design Mark	
Description of Mark	NONE
Goods/Services	Class 041. First use: PHYSICAL FITNESS INSTRUCTION AND TRAINING; HEALTH CLUB SERVICES, NAMELY PROVIDING INSTRUCTION AND EQUIPMENT IN THE FIELD OF PHYSICAL EXERCISE

U.S. Application No.	77460294	Application Date	04/29/2008
Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	PF		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 041. First use: PHYSICAL FITNESS INSTRUCTION AND TRAINING; HEALTH CLUB SERVICES, NAMELY PROVIDING INSTRUCTION AND EQUIPMENT IN THE FIELD OF PHYSICAL EXERCISE		

U.S. Registration No.	2370028	Application Date	09/21/1998
Registration Date	07/25/2000	Foreign Priority Date	NONE
Word Mark	NO DUMBELLS ALLOWED PF GYMS		
Design Mark			
Description of Mark	The mark consists, in part, of the terms, pf gyms no dumbells allowed, the design of a hand through a moving gear, and miscellaneous design. The rough edges surrounding the gear and the inner circle around the hand and the term, pf gyms, show movement of the gear.		
Goods/Services	Class 041. First use: First Use: 1998/01/00 First Use In Commerce: 1998/01/00 PHYSICAL FITNESS INSTRUCTION AND TRAINING; HEALTH CLUBS		

Attachments	77457337#TMSN.jpeg (1 page)(bytes) 77460294#TMSN.jpeg (1 page)(bytes) 75555765#TMSN.gif (1 page)(bytes) PFH059.petitiontocancel.pdf (8 pages)(618392 bytes)
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Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Signature	/TcT/
Name	TERESA C. TUCKER
Date	08/27/2008

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

In Re Trademark Reg. No. 3403041)
Dated: March 25, 2008)
Mark: pf PUREFIT, plus design)
Class: INT. 41)

DOCKET:
PFH059

PFIP, LLC)
Petitioner) Cancellation No.
)
v.)
)
Karen L. Angell and Paul D. Angell)
Joint Venture, The)
Registrant)
*

PETITION FOR CANCELLATION

PFIP, LLC, a New Hampshire Limited Liability Company having a principal place of business at 113 CROSBY ROAD, UNIT 15, DOVER, NH 03820, believes that it will be damaged by the registration of the mark “pf PUREFIT, plus design” shown in Registration No. 3403041, dated March 25, 2008, by Karen L. Angell and Paul D. Angell Joint Venture, The (hereinafter referred to as Registrant), and hereby petitions to cancel same.

The grounds for cancellation of said registration are as follows:

PETITIONER’S MARKS

1. Petitioner is the owner of the marks “pf, plus design,” as shown in U.S. Trademark Application Serial No. 77457337, “PF,” as shown in U.S. Trademark Application

Serial No. 77460294, and “NO DUMBELLS ALLOWED PF GYMS, plus design,” as shown in U.S. Trademark Registration No. 2370028.

2. Petitioner has been using the marks “PF,” “pf, plus design” and “NO DUMBELLS ALLOWED PF GYMS, plus design,” in commerce, in connection with the services identified in said Applications, namely, “physical fitness instruction and training; health club services, namely providing instruction and equipment in the field of physical exercise” and related goods and services, since at least as early as 1998.

3. Petitioner’s Applications have been denied registration under Section 2(d) based on Registrant’s U.S. Registration No. 3403041 for “pf PUREFIT, plus design.”

REGISTRANT’S REGISTRATION

4. On information and belief, on May 18, 2005 Registrant filed an Application with the United States Patent and Trademark Office for “pf PUREFIT, plus design” assigned Serial No. 78632265 in Class 41, for “Physical fitness consultation and instruction based on Pilates, dance, personal training and performance exercise programs, conducted via video production, digital/electronic media, studios, seminars, personal sessions, etc.,” based on a claim of bona fide intent to use in commerce under Section 1(b).

5. On information and belief, on December 2, 2007 Registrant filed a Statement of Use with the United States Patent and Trademark Office and claimed use of the mark in commerce in connection with all of the services recited in the application under Section 1(a) and a date of first use of the mark in commerce as August 1, 2005.

6. On information and belief, on March 25, 2008 the United States Patent and Trademark Office granted registration of the mark “pf PUREFIT, plus design” in Class 41 for

“Physical fitness consultation and instruction based on Pilates, dance, personal training and performance exercise programs, conducted in studios, seminars and personal sessions; video production of physical fitness consultation and instruction programs based on Pilates, dance, personal training and performance programs” and was assigned Registration No. 3403041.

PRIOR USE

7. Petitioner repeats and realleges the allegations set forth in paragraphs 1-6 hereof, and incorporates them herein by this reference.

8. On information and belief, Petitioner has made prior use of the marks “PF” and “pf, plus design” which are confusingly similar to registrant's mark “pf PUREFIT, plus design.”

9. Petitioner has been using the marks “PF” and “pf, plus design” in United States commerce since at least as early as 1998 in connection with its physical fitness club services.

10. Since adopting its said trademarks in connection with physical fitness club services Petitioner has enjoyed widespread use of its trademarks as an indication of the source of the goods and services being offered and sold by Petitioner's licensees. Petitioner's licensee, Pla-Fit Franchise, LLC, began offering nationwide franchises for the use of Petitioner's trademarks in 2003. Pla-Fit Franchise, LLC currently has approximately one hundred forty (140) franchisees and licensees using its trademark in twenty-three states.

11. Petitioner has expended substantial amounts of money, time and effort in advertising, popularizing and promoting its trademarks so that the trade and public have come to associate Petitioner's trademarks with services originating with, associated with or connected with, sponsored, authorized or endorsed by Petitioner and its licensees and franchisees.

12. On information and belief, Registrant adopted the mark “pf PUREFIT, plus design” subsequent to Petitioner’s use of confusingly similar marks in commerce.

13. On information and belief, Registrant claims a date of first use of the mark anywhere as July 1, 2005 and a date of first use of the mark in commerce as August 1, 2005, at least 5 years after Petitioner began using its marks in commerce in connection with similar services.

14. Petitioner’s marks “PF” and “pf, plus design” are likely to be confused with Registrant’s mark “pf PUREFIT, plus design” given the similarities in the sight, sound and commercial impressions of the marks and the similarities in the services being offered under the marks.

15. The Petitioner’s marks “PF” and “pf, plus design” are confusingly similar in sight, sound and commercial impression to Registrant’s mark “pf PUREFIT, plus design” because it is likely that Registrant’s mark would be shortened and referred to as “PF.” In addition, “PF” is the dominant portion of the Registrant’s mark. Dominant portions of marks are likely to be focused on and remembered by a consumer. Thus, the dominant portion of both parties’ marks is “PF.” Therefore, the marks are similar in sight, sound and commercial impression.

16. The Petitioner uses the marks “PF” and “pf, plus design” in commerce in connection with “physical fitness instruction and training; health club services, namely providing instruction and equipment in the field of physical exercise” whereas the services recited in Registration No. 3403041 for Registrant’s mark “pf PUREFIT, plus design” are “Physical fitness consultation and instruction based on Pilates, dance, personal training and performance exercise programs, conducted in studios, seminars and personal sessions; video production of physical fitness consultation and instruction programs based on Pilates, dance, personal training and performance programs.” Thus, both parties’ services comprise physical fitness instruction or related services.

Given these similarities customers are likely to be confused as to the source of the services being offered.

17. Petitioner has established proprietary rights in the marks “PF” and “pf, plus design” that produce a likelihood of confusion with Registrants mark “pf PURFIT, plus design.”

18. Petitioner has been or will continue to be damaged by the existence of Registration 3403041 since the Registration has been cited by the U.S. Trademark Office as a bar to Petitioner’s registrations.

FRAUD ON THE PATENT AND TRADEMARK OFFICE

19. Petitioner repeats and realleges the allegations set forth in paragraphs 1-18 hereof, and incorporates them herein by this reference.

20. On information and belief, Registrant committed fraud on the Patent and Trademark Office in the procurement of Registration No. 3403041 by making material representations of fact in its declarations which it knew or should have known to be false.

21. On information and belief, Registrant deliberately attempted to mislead the United States Patent and Trademark Office into registering the mark by making a false declaration stating the mark was in use in commerce in connection with all of the services identified in the Application.

22. On information and belief, on July 17, 2007 the United States Patent and Trademark Office issued a Notice of Allowance for U.S. Trademark Application Serial No. 78632265 for the mark “pf PUREFIT, plus design,” for intended use in connection with “Physical fitness consultation and instruction based on Pilates, dance, personal training and performance exercise programs, conducted in studios, seminars and personal sessions; video

production of physical fitness consultation and instruction programs based on Pilates, dance, personal training and performance programs.”

23. On information and belief, on December 2, 2007 Registrant submitted a Statement of Use with the U.S. Patent and Trademark Office wherein it declared that the mark was being used in commerce in connection with *all* of the services listed in the application, namely, “Physical fitness consultation and instruction based on Pilates, dance, personal training and performance exercise programs, conducted in studios, seminars and personal sessions; video production of physical fitness consultation and instruction programs based on Pilates, dance, personal training and performance programs” and the date of first use of the mark anywhere was July 1, 2005 and the date of first use of the mark in commerce was August 1, 2005.

24. On information and belief, on December 2, 2007 Registrant’s declaration submitted with its Statement of Use stating that applied for mark was being used in commerce in connection with *all* of the services listed in the application since August 1, 2005 was made falsely with an intent to mislead and deceive the United States Patent and Trademark Office into registering the applied for mark.

25. On information and belief, Registrant was not using the mark in commerce in connection with *all* of the services identified in the application and knowingly and intentionally made false statements that the mark was in use in commerce in connection with the identified services.

26. On information and belief, Registrant has never used the mark in commerce in connection with “video production of physical fitness consultation and instruction programs based on Pilates, dance, personal training and performance programs.” Thus, Registrant’s

declaration stating the mark was being used in commerce in connection with this service was a material representation of fact which it knew or should have known to be false.

27. On information and belief, on March 25, 2008 Registration was issued for the mark in Class 41 for "Physical fitness consultation and instruction based on Pilates, dance, personal training and performance exercise programs, conducted in studios, seminars and personal sessions; video production of physical fitness consultation and instruction programs based on Pilates, dance, personal training and performance programs" based on Registrant's intentionally deceptive statements and declarations fraudulently made to procure registration.

28. Petitioner has been or will continue to be damaged by the existence of Registration 2908361 since the Registration has been cited by the U.S. Trademark Office as a bar to Petitioner's registration.

WHEREFORE, Petitioner prays that Registration No. 3403041 be cancelled, and that this Petition be granted in favor of Petitioner.

RESPECTFULLY SUBMITTED this 27th day of August, 2008.

PFIP, LLC

By 

Teresa C. Tucker

Attorney for Petitioner

Grossman, Tucker, Perreault & Pfleger, PLLC

55 S. Commercial Street

Manchester, NH 03101

603-668-6560

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CERTIFICATE OF SERVICE

It is hereby certified that a true and complete copy of the subject Petition for Cancellation was served upon the Registrant via First Class mail, postage prepaid, this 27th day of August, 2008 to the following address:

Karen L. Angell and Paul D. Angell Joint Venture, The
134 6th Avenue
Kirkland, WA 98033
United States